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BRIEF AND APPENDIX FOR APPELLANT

United States Court of Appeals

FOR THE FOURTH JUDICIAL CIRCUIT

No. 7366

APRIL TERM, 1957

JOSEPH N. ROMM, *Appellant,*

v.

COMMISSIONER OF INTERNAL REVENUE, *Appellee.*

Appeal from Decision and Order of the Tax Court of the United States

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BRIEF AND APPENDIX FOR APPELLANT

STATEMENT OF THE CASE

Appeal from Tax Court decision holding appellant liable for total of $40,517.95 income tax deficiences and $31,339.33 fraud penalties for the years 1942 through 1946.

QUESTIONS PRESENTED

I. Did the Tax Court err in holding that a new issue was raised by petitioner's motion and counter-recomputation under Rule 50, following mandate?

II. Did the Tax Court fail in its duty and the exercise of its power to consider petitioner's law contentions as to entry of a new decision following hearing granted?

III. Did the Tax Court err in failing and refusing to find the correct tax liabilities of petitioner in the Rule 50 proceeding?

Appellant's contention is that all of these questions should be answered affirmatively.

JURISDICTIONAL STATEMENT

This Court has jurisdiction of this appeal under 26 U.S.C., section 7482 (a) and (b), *infra*. The tax returns were filed with the Baltimore, Md. Internal Revenue Office. The decision appealed from was entered December 17, 1957,—following this Honorable Court's modification, affirmance and mandate issued June 29, 1957 under present docket number. Petition for this review was filed January 15, 1958.

STATUES INVOLVED

Title 26 U.S.C., Sec. 7482 Courts of Review.

> (a) "Jurisdiction—The United States Courts of appeals shall have exclusive jurisdiction to review the decisions of the Tax Court.
>
> (b) Venue— * * * such decisions may be reviewed by the United States Court of Appeals for the circuit in which is located the office to which was made the return of the tax in respect of which the liability arises."

Title 26 U.S.C., Sec. 7481. (3) (b) (4):

> "Rehearing. * * * if the case is remanded by the United States Court of Appeals to the Tax Court for a rehearing, * * * then the decision of the Tax Court rendered upon such rehearing shall become final in the same manner as though no prior decision of the Tax Court has been rendered."

Rule 50, Tax Court of the United States. * * *

> "b) Procedure in absence of agreement—If, however, the parties are not in agreement as to the amount

of the deficiency or overpayment to be entered as the decision, in accordance with the report of the Court, either of them may file with the Court a computation of the deficiency or overpayment believed by him to be in accordance with the report of the court. The clerk will serve a copy thereof upon the opposite party, will place the matter upon a motion calendar for argument in due course and will serve notice of the argument upon both parties. If in accordance with this Rule computations are submitted by the parties which differ as to the amount to be entered as the decision of the court, the parties will be afforded an opportunity to be heard in argument thereon on the date fixed, and the court will determine the correct deficiency or overpayment and enter its decision.

(c) Limits on argument under this Rule—Any argument under this Rule shall be confined strictly to the consideration of the correct computation of the deficiency or overpayment resulting from the report already made, and no argument will be heard upon or consideration given to the issues on matters already disposed of by such report or any new issues.

* * *"

(10) (2) STATEMENT OF THE FACTS

1. Petitioner Joseph N. Romm is a resident of Takoma Park, Maryland. His income tax returns were filed with the Collector (now District Director) of Internal Revenue at Baltimore, Maryland.

2. On October 25, 1954, respondent mailed to petitioner a notice of deficiency in income taxes and additions as follows:

1942	2,159.56 deficiency	$ 1,079.78 Addition
1943	2,211.52 deficiency	1,105.76 Addition
1944	16,321.23 deficiency	8,160.61 Addition
1945	17,038.79 deficiency	8,519.39 Addition
1946	9,582.59 deficiency	42,187.80 Addition

3. Petitioner duly petitioned the Tax Court of the United States, the case was tried on joint stipulation,

oral and written evidence, and on April 30, 1956, memorandum findings of facts and opinion by Hon. John E. Mulroney, Judge of said Tax Court, were entered. A printed copy thereof is in the files of this Honorable Court, docket No. 7366,—appellant's appendix, P. 23.

4. On July 24, 1956, respondent filed his computation for entry of decision under Rule 50 of said Tax Court. Petitioner's counsel agreed that the computation was in accordance with the Tax Court's then opinion. Based thereon, the Tax Court decision was entered on July 26, 1956 for the following; *Ibid*, p. 36:

1942	$ 2,159.56	Deficiency	$ 1,079.78 Addition
1943	2,145.22	Deficiency	1,072.61 Addition
1944	15,745.65	Deficiency	7,872.83 Addition
1945	16,853.67	Deficiency	8,426.84 Addition
1946	4,445.69	Deficiency	12,065.43 Addition

5. Petitioner duly filed petition for review by this Honorable Court (docket 7366) which on May 27, 1957, affirmed in part and modified in part and on June 29, 1957, issued its judgment and mandate (ap. 1) remanding the case to the Tax Court for further proceedings not inconsistent with the opinion.

6. On October 31, 1957, and in lieu of a computation, respondent filed with the Tax Court his motion for entry of decision as to tax deficiencies and additions as revised. App. 1. Petitioner was neither served, nor notified by the clerk, nor given any opportunity to be heard as provided in Rule 50 of the Tax Court. Nevertheless and on November 4, 1957, the Tax Court proceeded to enter its decision only as asked by the respondent. App. 2.

7. Whereupon, petitioner filed his motion to stay, for hearing, reconsideration and leave to file his own counter-computation under Rule 50—copy appearing at App. 3. On November 20, 1957, the Tax Court entered order (app. 11) vacating and setting aside its decision entered No-

vember 4, 1957, and set December 11, 1957, for hearing on the motions filed by both parties,—which was held in Judge Mulroney's chambers, without reporter, although petitioner's counsel filed a memo giving citations and basis for his claim.

8. December 17, 1957, Judge Mulroney's order and decision were entered, denying petitioners motion and granting respondent's motion. App. 12. Petition for review by this Court was filed and served November 21, 1957. App. 13.

(c) (8) SUMMARY OF THE ARGUMENT

9. I. No new issues were raised or involved.

II. An entirely new decision being compelled by the mandate, the Tax Court had both the power and duty to make it correctly.

III. The figures found in the decision are incorrect under the law from the record in the case.

I. No new issues were raised by petitioner or involved.

10. The Court below takes the position petitioner was asking a new rule 50 computation based upon an argument which raised new issues. First: a new computation was required by the mandate of this Court and under the law which "stripped" the first decision of its finality as though it had not been rendered. See 26 USC, sec. 7481 (B)-(4); *C. C. Gann* v. *Commissioner*, 157 F. Supp. 169, 177—quoting from *C. C. Gann* v. *Comm.* 247 F.2 359 and heavily relied upon here (*infra*).

11. Throughout it was impressed upon the Court below that no question was raised as to any of the issues decided, that no new evidence was in order and that all petitioner was doing was following that Court's own Rule 50 and asking for that "correct" computation specifically

required. All of the supporting facts were already in the record.

12. It is Hornbook law that an issue is a single, certain and material point raised by the pleadings, affirmed on one side and denied upon the other *Black's Law Dictionary*, 3rd Ed., "Issue".

13. But even if it is held a new issue was raised, the Tax Court still is in error under the circumstances here, as shown by *Chas. A. Polizzi* v. *Comm.*, (CA-6) 247 F.2 875 remanding to the Tax Court for even allowing new evidence (which we do not ask), the Sixth Circuit holding that running through all of the decisions it is clear the taxpayer should not suffer through "a wrongful determination of his tax liability." (877, 878).

14. So also the decision below errs in relying upon the statement that the parties filed an agreed computation of the tax on July 24, 1956, after the opinion below. All the parties then did or do under such circumstances is to agree that certain figures are correct "under the court's opinion." But we never agreed with the Tax Court's opinion and neither did this Honorable Court as to portions thereof.

II. An entirely new decision being compelled, the Tax Court had both the power and the duty to make it correct.

15. The Tax Court's position is that it was restricted by the mandate to one item for one year and to eliminating the wife as a party. But there is nothing in the wording of the mandate which required the Tax Court to close its eyes to gross error.

The mandate was for further proceedings not inconsistent with Your Honor's opinion, which referred to issues. There is nothing whatever in the petitioner's position inconsistent with anything in your opinion.

16. There is nothing new in petitioner's position. The Tax Court's own Rule 50 thrice states that the computation of the deficiency must be correct. In the *Polizzi* decision, *Supra*, the Court of Appeals even ordered the Tax Court to consider an issue not raised earlier because, citing *Commissioner v. Wells*, 132 F.2 405, 408, and others, it said rules of practice and procedure were devised to promote the ends of justice. It held the taxpayer's motion on recomputation there could have been considered one to amend the pleadings and could and should have been granted.

17. Our motion was one for hearing and reconsideration of the figures, accompanied by a recomputation based entirely upon the record. Even had it been framed technically as a motion to amend, not a solitary item of new evidence would have been involved—although in Polizzi such was indispensable.

III. The figures found by the Tax Court are grossly incorrect in law.

18. Following the Tax Court's opinion April 30, 1956, respondent himself prepared a computation under Rule 50 which, as the Tax Court now says, the parties agreed on July 24, 1956, was in accordance with the Tax Court's then opinion. At the time this computation was made and filed, the respondent had consistently refused to acquiesce in the decisions in *Stern Bros. & Co.* v. *Comm.*, 16 TC 295, and *Esther M. Stein v. Comm.*, 25 TC 904,—his refusal being covered by Revenue ruling 107 (CB 1953-1, 178),—so that his Rule 50 computation followed that ruling.

19. After the present case had been appealed to this Court and while the Stern and Stein cases also were on appeal, respondent reversed his position, revoked his ruling 107 and issued a new ruling (57-332, IRB (1957

29-8) finally acquiescing in the Stern and Stein decisions. These two decisions are the key to the petitioner's case.

20. Under them, where in a net worth increase case, as here; and where a fraudulent return was filed, the amounts later asserted as penalties and deficiencies must be treated as legitimate debts of the taxpayer due on the return date and, if then unpaid, must be treated as deductions in computing net worth for the return year.

21. On December, 1956, the 6th Circuit decided *Drybrough et al* v. *Comm.*, 238 F.2 735, which cited *Stern* and *Stein* with approval and held first that accrual or cash bases were not involved—also that disputed taxes as well as penalties must be deducted to arrive at the "true financial status" which is the sole objective of the net worth method. We contend that "true financial status" as so used means no more than "net worth".

22. *Pacific Affiliates, Inc.* v. *Comm.*, 18 TC 1175 affirmed in 224 F.2 578, holds pointedly the fact the assertions were not made until later years does not affect proper deduction in the year succeeding that to which the assertion applied.

23. Then came *C. C. Gunn* v. *Comm.*, 247 F.2 359,—an individual net worth case, in which the 8th Circuit said the approach to the establishment of net worth must be "a question of getting at business or economic reality, regardless of the fact that the taxpayer may be a revenue delinquent"; also "is a matter of getting at actual economic fact and of not allowing reality to be obscured by engaging solely in a rigid tax-incident glance"—that the question of its fairness or correctness should not too loosely be allowed to be "brushed under the rug of Commissioner presumption". This Gunn case later went into the District Court and an injunction granted, as shown *supra*. *Stern* and *Stein* again appear in the very recent Sidney Stark et al v. Comm., 29 TC—No. 17.

24. In the present case, the Tax Court had made its findings of fact as to net worth figures. Petitioner agreed (and the record so shows) the *use* of the *method* was justified, that such figures as were included were correct but disagreed with the inclusion of some, with the failure to include others and specifically against the resultant figures as to the purely theoretical income,—and this Honorable Court's modifications confirm we were justified. We did sign that the first figures below were "in accordance with the Tax Court's opinion" but we did not agree with the opinion and neither did this court in full. But the main point is that the pleadings, opening with the deficiency notice, gave the assertions for each year and respondent's answer admitted them. If our point was a new issue, all we could do would be to show without further evidence the same figures,—so we have contended no new issue was raised.

25. When the Tax Court issued its decision under the mandate, later revoking it and permitting petitioner to file his counter-computation as authorized specifically by Rule 50,—that counter-computation claimed these assertions as reductions of net worth under the *Stern*, *Stein*, *Drybrough* and other cases cited.

26. The Tax Court's attention pointedly was called to *Chas. A. Polizzi* v. *Comm.*, supra, where the 6th circuit dealt directly with the duties imposed by Rule 50. In that case, as here, the issues raised had been decided. On the Rule 50 hearing the taxpayer contended the computation should have been made on a joint return basis. This had not been one of the issues, but the 6th Circuit held the Tax Court should have followed the taxpayer, even though his motion may have been untimely and should have been to amend the pleadings. It directed the taxpayer's contention should have been granted because there had been "a wrongful determination of the tax liability". This precisely is petitioner's contention here.

27. The Tax Court in effect followed this on one issue here, by refusing to permit an allowed net operating loss carry-back from 1948 to 1946 to reduce the deficiency for 1946 but not the penalty—on the same theory of our decisions that the tax and penalties were due and payable when the fraudulent return was filed—even though a later carry-back would change the tax liability figure. The same denial was made to disallow the substantial voluntary payment made by petitioner prior to the deficiency notice because (and this Court so confirmed) the penalty for 1946 here was due on March 15, 1947. That is why both this Court and the Tax Court found a 50% penalty for 1946 around 150% of the 1946 deficiency.

28. Petitioner's computation applies the same *Stern, Stein, Drybrough*, etc., principle not only to the tax and penalty liabilities (as reductions for each year), but by the same reasoning also the statutory interest due and unpaid at the end of each year in which the said tax and penalty liabilities accrued and were unpaid. Net worth computations are made as of the close of each year.

29. The Commissioner of Internal Revenue has formally admitted that petitioner's contentions here are correct. He did so when he reversed his former non-acquiescence and accepted the principle of the Stern and Stein decisions. Petitioner here merely is asking that he be granted what the Commissioner (amplified by the other decisions cited) show without exception he is entitled.

30. Applying the principles as contended for by petitioner, the final figures as to liability as found by the Tax Court are grossly incorrect, contrary to Rule 50 and the decisions and manifestly unfair, as shown below:

	Tax Court		*Petitioner's Computation*	
1942	$ 2,159.56	$ 1,079.78	2,159.56	$ 1,079.78
1943	2,145.22	1,072.61	707.95	353.98
1944	15,745.65	7,872.83	11,536.89	5,768.45
1945	16,853.67	8,426.84	1,500.43	750.22
1946	3,613.85	12,887.27	(13,088.81)*	4,016.06
	40,517.95	31,339.33	1,816.02	11,968.49
		40,517.95		1,816.02
Totals without Interest		$71,857.28		$13,784.51

*Overpayment from August 11, 1954.

CONCLUSION

31. Petitioner accordingly asks that this Honorable Court reverse the decision of the Tax Court entered December 17, 1957, insofar as it relates to the final computation of the liability figures; and remand the case with instructions to correctly redetermine the figure liability, reducing the theoretical taxable income based upon the net worth computation, found by it, by reducing the increase in said net worth as of the end of each calendar year by the amounts of deficiencies and penalties asserted as due and unpaid upon the date each return was filed, as shown by the deficiency notice in the pleadings, as well as any statutory interest due and unpaid thereon as of the close of each year.

Respectfully submitted:

WARREN W. GRIMES,
Shoreham Building,
Washington 5, D. C.,
Attorney for Appellant.

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JUDGMENT AND MANDATE

On Petition to Review the Decision of The Tax Court of the United States.

This Cause came on to be heard on the transcript of the record from The Tax Court of the United States, and was argued by counsel.

On Consideration Whereof, It is now here ordered and adjudged by this Court that the decision of the said The Tax Court of the United States, in this cause, be, and the same is hereby, modified as set forth in the opinion of the Court filed herein and, as so modified, it is affirmed; and that this cause be, and the same is hereby, remanded to The Tax Court of the United States for further proceedings not inconsistent with the opinion of the Court filed herein. May 27, 1957.

SIMON E. SOBELOFF
United States Circuit Judge.

June 29, 1957, mandate issued and transmitted to the Clerk of The Tax Court of the United States at Washington, D. C.

RESPONDENT'S MOTION FOR ENTRY OF DECISION

Comes Now the Commissioner of Internal Revenue by his attorney, Nelson P. Rose, Chief Counsel, Internal Revenue Service, and pursuant to the opinion and mandate issued in this case by the United States Court of Appeals for the Fourth Circuit shows the Court that the deficiencies and penalties found in its decision entered July 26, 1956, have been assessed under Section 7485, Internal Revenue Code of 1954, and have not been paid.

As indicated in the deficiency notice issued in this case on October 25, 1954, a copy of which is appended

to the Petition as Exhibit A, the Commissioner allocated $821.84, part of the payment made on August 11, 1954 (Stip. of Facts Par. 2, filed December 12, 1955) to the fraud penalty for 1946. He also applied $10.00 of said payment made prior to the issuance of the deficiency notice to accrued interest for 1946. As directed by the mandate the Court should find that there are now unpaid deficiencies in income tax and fraud penalties as follows:

Year	*Income Tax*	*Additions to Tax*
1942	$ 2,159.56	$ 1,079.78
1943	2,145.22	1,072.61
1944	15,745.65	7,872.83
1945	16,853.67	8,426.84
1946	3,613.85	12,887.27

/s/ NELSON P. ROSE
NELSON P. ROSE
Chief Counsel
Internal Revenue Service

DECISION OF TAX COURT

(Entered November 4, 1957)

Pursuant to the Mandate of the United States Court of Appeals for the Fourth Circuit, filed July 1, 1957, whereby the decision of this Court in this cause was modified and the motions for entry of decision filed by the respondent herein on October 31, 1957, it is

ORDERED: That the above entitled case, in so far as it purports to relate to Helen K. Romm, be dismissed as to her, and it is

ORDERED and DECIDED: That there are no deficiencies in income tax and additions to tax, or overpayments therefor, due from or to her for the taxable years 1942 to 1946, inclusive; and it is further

ORDERED and DECIDED: That there are now unpaid deficiencies in income tax and additions to the tax due from petitioner Joseph N. Romm, as follows:

Year	*Income Tax*	*Additions to Tax*
1942	$ 2,159.56	$ 1,079.78
1943	2,145.22	1,072.61
1944	15,745.65	7,872.83
1945	16,853.67	8,426.84
1946	3,613.85	12,887.27

JOHN E. MULRONEY,
Judge.

APPELLANT'S MOTION FOR STAY, HEARING, RECONSIDERATION AND LEAVE TO FILE UNDER RULE 50

Comes now Joseph N. Room, petitioner, by his attorney of record and respectfully moves for a stay of the judgment and decision of this Honorable Court entered November 4, 1957; for hearing and reconsideration thereof; and for leave to file counter-recomputation in disagreement thereto, under Rule 50 (b).

The reasons for this motion are that on October 29, 1957, the day the Supreme Court denied certiorari in this case, petitioner's counsel conferred with counsel for respondent and then was handed a rough draft of respondents proposed recomputation figures as to result only, but no recomputation upon which the same were based. Petitioner then stated he would disagree therewith, file his own recomputation and motion and discussed the legal reasons for such action. It then was orally agreed that such cross-computation would be prepared in detail and submitted to respondent with a letter brief in support thereof, both to be checked by respondent. Petitioner was occupied for several days upon the detailed recomputation and did submit the same to the respondent with the

bases for showing that his proposed final figures were not "correct" as required by Rule 50. Nevertheless and without serving upon petitioner either a copy of his proposed motion for entry of judgment, motion for entry of decision, proposed decision or any recomputation underlying them, respondent filed the same on October 31, 1957. The motions and proposed decision never were set down for hearing or opposition and petitioner never given a reasonable opportunity to pursue the procedure prescribed in paragraph (b) of Rule 50—to petitioners substantial prejudice. Wherefore, petitioner asks that this motion be granted and the matter be set down for argument in accordance with Rule 50 (b).

/s/ WARREN W. GRIMES
Attorney for petitioner.

APPELLANT'S MOTION FOR ENTRY OF DECISION

Comes now the petitioner, Joseph N. Romm, by his attorney, Warren W. Grimes, and pursuant to the opinion and mandate issued in this case by the United States Court of Appeals for the Fourth Circuit, respectfully shows this Court that, under Rule 50 computation attached hereto, its decision should be entered for the following correct amounts:

Year	Income Tax Deficiencies	Additions to the Tax
1942	$ 2,159.56	$1,079.78
1943	707.95	353.98
1944	11,536.89	5,768.45
1945	1,500.43	750.22
1946	(13,088.81) Overpayment August 11, 1954	4,016.06

and that the amounts found by this Court in its decision entered July 26, 1956, having been assessed under Sec-

tion 7485, I.R.C. for 1954, not having been paid, the assessment to be revised to conform hereto.

WARREN W. GRIMES
Attorney for Petitioner

APPELLANT'S RULE 50 COMPUTATION

Taxable Year Ended December 31, 1942

SCHEDULE 1

There would be no change in the $2,159.56 deficiency and $1,079.78 penalty as finally found by the Tax Court.

Taxable Year Ended December 31, 1943

SCHEDULE 2

ADJUSTMENT OF NET INCOME

	Income Tax Net Income	*Victory Tax Net Income*
Net income per notice of deficiency October 25, 1954	$12,376.24	$13,419.72
Less: Reduction in income (2-A below)	3,500.38	3,500.38
Net income adjusted	$ 8,875.86	$ 9,919.34

SCHEDULE 2-A

EXPLANATION OF ADJUSTMENTS

(a) Amount of petitioner's daughter's savings account No. R-714, allowed by Tax Court	$ 161.70
(b) Deficiency asserted for 1942, due 3/15/43 and unpaid	2,159.56
(c) 50% penalty asserted for 1942, due 3/15/43 and unpaid	1,079.78
(d) Statutory interest on $2,159.56 deficiency, 3/15/43 to 12/31/43, close of net worth year, computed at 4.6%	99.34
Total reduction in income	$ 3,500.38

Taxable Year Ended December 31, 1943

SCHEDULE 3

COMPUTATION OF INCOME AND VICTORY TAX

Adjusted income tax income, Sch. 2		$ 8,875.86
Less: personal exemption		1,200.00
Surtax net income		7,675.86
Less earned income credit		300.00
Normal tax net income		7,375.86
Normal tax at 6%		442.55
Surtax ($980.00 on $6,000 plus 13% of $1,675.86)		1,197.86
Total income tax liability		$ 1,640.41
Adjusted Victory tax net income, Sch. 2	$9,919.34	
Less specific exemption	624.00	
Income subject to Victory tax	9,295.34	
Victory tax before credit (5% of $9,295.34)	464.77	
Less Victory tax credit (40% of $464.77)	175.91	
Net Victory tax		288.86
Total income and Victory tax liability		1,929.27
Income tax and Victory tax liability shown on return (line 16) Account 368405		1,221.32
Deficiency in income tax		707.95
50% penalty		353.98

SCHEDULE 3-A

	Shown by return	As corrected
(1) (a) Income and victory tax, line 16, p. 4 of return	$1,221.32	$1,929.27
(b) Unforgiven part of 1942 tax, line 19(c), p. 4 of return	243.20	243.20
(c) Total income and victory tax	1,464.52	2,142.47

Taxable Year Ended December 31, 1943

(2) Less:				
(a) Income and victory tax withheld	None			
(b) Income tax paid on 1942 income	$486.42			
(c) Tax paid on 1943 income on account of declaration of estimated tax	486.42		$486.42	
(d) Tax assessed on 1943 return	491.68	$1464.52	491.68	$978.10
(3) Additional amount to be assessed				

Taxable Year Ended December 31, 1944

SCHEDULE 4

ADJUSTMENTS TO NET INCOME

Net income shown in deficiency notice, October 25, 1954	$ 36,181.71
Less: Reduction in income (4-A below)	4,293.19
Net income as adjusted	$ 31,888.52

Taxable Year Ended December 31, 1944

SCHEDULE 4-A

EXPLANATION OF ADJUSTMENTS

Net income as shown in net worth statement as of 12/31/44 is decreased by the following:

(1) Savings of petitioner's daughter, account No. R-714		
Balance 12/31/44	$508.05	
Balance 12/31/43	161.70	$ 346.35
(2) Proceeds of endowment policy (½ of $1,000.20) deposited in wife's savings account		500.10
(3) Deficiency asserted for 1943 due 3/15/44 and unpaid		2,145.22
(4) 50% penalty for 1943, due 3/15/44 and unpaid		1,072.61
(5) Statutory interest @ 6% p.a. on 1943 deficiency, 3/15/44 to 12/31/44, computed @ 4.6%		99.34
(6) Statutory interest on 1942 deficiency of $2,159.56, unpaid on 12/31/44		129.57
Total decrease of net income shown in statement of net worth as of 12/31/44		$4,293.19

Taxable Year Ended December 31, 1944

SCHEDULE 5

COMPUTATION OF INCOME TAX

Adjusted net income		$ 31,888.52
Less: Surtax exemption		1,000.00
Surtax net income		$ 30,888.52
Surtax ($10,740 plus 62% of $4,888.52)		13,770.88
Adjusted net income	$ 31,888.52	
Less normal tax exemption	500.00	
Normal tax net income	$ 31,388.52	
Normal tax, 3% on $31,388.52		956.66
Total income tax liability		$ 12,814.22
Income tax liability per return (Acct. 3017307)		1,277.33
Deficiency in income tax		11,536.89
50% Penalty		5,768.45

Taxable Year Ended December 31, 1945

SCHEDULE 6

ADJUSTMENT OF NET INCOME

Net income shown in deficiency notice, October 25, 1954	$ 37,899.27
Less: Reduction in income, 6-A below	24,961.51
Net income as adjusted	$ 12,937.76

Taxable Year Ended December 31, 1945

SCHEDULE 6-A

EXPLANATION OF ADJUSTMENTS

Net income as shown in the net worth statement as of 12/31/44 is decreased by the following:

(1) Savings of petitioner's daughter, Account No. R-714		
Balance 12/31/45	868.50	
Balance 12/31/44	508.05	$ 360.45
(2) Deficiency asserted for 1944, due 3/15/45 and unpaid		15,745.65
(3) 50% penalty for 1944, due 3/15/45 and unpaid		7,872.83
(4) Statutory interest on 1944 deficiency, 3/15/45 to 12/31/45, computed at 4.6%		724.30
(5) Statutory 6% interest on 1942 deficiency of $2,159.56, unpaid on 12/31/45		129.57
(6) Statutory 6% interest on 1943 deficiency of $, unpaid on 12/31/45		128.71
Total decrease of net income shown in statement of net worth as of 12/31/45		$ 24,961.51

COMPUTATION OF INCOME TAX

Adjusted net income, Sch. 6		$ 12,937.76
Less: surtax exemption		1,000.00
Surtax net income		$ 11,937.76
Surtax ($2,640 plus 38% of $1,937.76)		2,795.02
Adjusted net income	$12,937.76	
Less: normal tax exemption	500.00	
Normal tax net income	$12,437.76	
Normal tax thereon @ 3%		373.13
Total income tax liability		$ 3,168.15
Income tax liability per return. Acct. 9080990		1,667.72
Deficiency in income tax		$ 1,500.43
50% penalty		$ 750.22

Taxable Year Ended December 31, 1946

SCHEDULE 8

ADJUSTMENTS TO NET INCOME

Net income per deficiency notice, October 25, 1954		$55,610.62
Less: (a) Reduction in income, 8-A below	$27,602.29	
(b) Net 1948 operating loss carry-back	6,774.34	34,576.63
Net income as adjusted		$21,033.99

SCHEDULE 8-A

EXPLANATION OF ADJUSTMENTS

(a) (1)	Savings account of petitioner's daughter (No. R-714):		
	Balance 12/31/46	$1,211.99	
	Balance 12/31/45	868.50	$ 343.49
(2)	Deficiency asserted for 1945, due 3/15/46 and unpaid		16,853.67
(3)	50% penalty thereon		8,426.84
(4)	Statutory interest on 1945 deficiency, 3/15/46 to 12/31/46 year's net worth date, computed at 4.6%		775.27
(5)	Statutory interest on 1942 asserted deficiency of $2,159.56, unpaid on 12/31/46		129.57
(6)	Statutory interest on 1943 asserted deficiency of $2,145.22		128.71
(7)	Statutory interest on 1944 asserted deficiency of $15,745.65		944.74
	Total reduction in income—exclusive of Carry-back		$27,602.29

Taxable Year Ended December 31, 1946

(b) Net operating loss carry-back from 1948, allowed by Tax Court, computed as follows:

Net loss per 1948 return		($13,396.22)
Capital items charged to expense	$6,201.34	
Excessive depreciation	81.36	
Bldg. Assn. dividends	139.18	6,421.88
Corrected net operating loss		$ 6,974.34

SCHEDULE 9

COMPUTATION OF INCOME TAX

Adjusted net income, schedule 8		$21,033.99
Less: exemptions		1,000.00
Income subject to tentative normal tax and surtax		20,033.99
Combined tentative normal tax and surtax, ($7,270.00 plus 53% of $33.99)		7,288.01
Less: tax reduction (5% of $7,288.01)		364.40
Total income tax liability		$ 6,923.61
Income tax liability per return— Acct. 3030452	$ 2,744.79	
Additional, Acct. 39-605120— 1954 List (8/11/54)	16,436.79	
Additional, Acct. 39-605120— 1954 List (8/11/54) Amount erroneously credited to 1946 penalty and ruled by CCA to be applied to deficiency	831.84	
Total tax paid		$20,012.42
Overpayment		$13,088.81

Taxable Year Ended December 31, 1946

SCHEDULE 10

COMPUTATION OF TAX BEFORE ALLOWANCE OF 1948 NET OPERATING LOSS CARRY-BACK FOR DETERMINATION OF FRAUD PENALTY.

Net income per deficiency notice, October 25, 1954	$55,610.62
Less: reduction in income, Sch. 8-A	27,602.29
Net income adjusted, before allowance of 1948 net operating loss carry-back	$28,008.33
Less: exemptions	1,000.00
Income subject to tentative normal tax and surtax	$27,008.33
Combined tentative normal tax and surtax ($10,770.25 plus 59% of $1,008.33)	11,365.16
Less: Tax reduction (5% of $11,365.16)	568.26
Total income tax liability before allowance of net operating loss carry-back	$10,796.90
Income tax liability shown on return—Acct. 3030452	2,744.79
Deficiency for purposes of penalty computation	$ 8,052.11
50% penalty	$ 4,016.06

ORDER VACATING TAX COURT DECISION AND SETTING HEARING

Upon consideration of motion of counsel for petitioners filed this date, the decision of this Court entered November 4, 1957, is hereby vacated and set aside, and it is further

ORDERED, That the petitioners' motion for entry of decision, with computation attached, be filed as of this date and that hearing on motions for entry of decision filed by both parties is set for Washington, D. C., at 10 A. M., December 11, 1957.

Entered November 20, 1957.

JOHN E. MULRONEY,
Judge.

ORDER AND DECISION APPEALED

Pursuant to Order of this Court dated November 20, 1957, hearing was had upon the motions of both parties for the entry of decision and at the conclusion of the hearing the matter was considered and the Court took the same under advisement.

It appears to the Court that what petitioner Joseph N. Romm is now seeking is a new Rule 50 computation based on an argument which raises new issues. The record shows the parties filed an agreed computation of the tax on July 24, 1956, after the Opinion of this Court, and the matter is now here on the Mandate of the United States Court of Appeals for the Fourth Circuit which commands, in part:

> It is now here ordered and adjudged by this Court that the decision of the said The Tax Court of the United States, in this cause, be, and the same is hereby, modified as set forth in the opinion of the Court filed herein and, as so modified, it is affirmed;
>
> * * *

The Opinion of the Court of Appeals (Joseph N. Romm and Helen K. Romm, his wife, v. Commissioner of Internal Revenue, No. 7366, Decided May 27, 1957) shows quite clearly that the modification ordered was as to the allocation of a payment of $831.24 with respect to the 1946 deficiency and as to the liability of taxpayer's wife. This modification is reflected in respondent's computation accompanying his motion for decision, which computation we hold to be correct, and the following will be the

DECISION

> Pursuant to the Mandate of the United States Court of Appeals for the Fourth Circuit, filed July 1, 1957, whereby the decision of this Court in this cause was modified and the motions for entry of decision filed by the respondent herein on October 31, 1957, it is

ORDERED: That the above entitled case, in so far as it purports to relate to Helen K. Romm, be dismissed as to her, and it is

ORDERED and DECIDED: That there are no deficiencies in income tax and additions to tax, or overpayments therefor, due from or to her for the taxable years 1942 to 1946, inclusive; and it is, further

ORDERED and DECIDED: That there are now unpaid deficiencies in income tax and additions to the tax due from petitioner Joseph N. Romm, as follows:

Year	*Income Tax*	*Additions to Tax*
1942	$ 2,159.56	$ 1,079.78
1943	2,145.22	1,072.61
1944	15,745.65	7,872.83
1945	16,853.67	8,426.84
1946	3,613.85	12,887.27

JOHN E. MULRONEY,
Judge.

Entered Dec. 17, 1957.

PETITION FOR REVIEW

To The Honorable, The Judges of the United States Court of Appeals for the Fourth Judicial Circuit:

JOSEPH N. ROMM hereby petitions the United States Court of Appeals for the Fourth Judicial Circuit to review the decision of The Tax Court of the United States entered on the 17th day of December, 1957, ordering and deciding that there are deficiencies in income taxes and additions thereto the same as follows:

1942	$2,159.56 deficiency	$1,079.78 addition
1943	2,145.22 deficiency	1,072.61 addition
1944	15,745.65 deficiency	7,872.83 addition
1945	16,853.67 deficiency	8,426.84 addition
1946	3,613.85 deficiency	12,887.27 addition

This petition is filed pursuant to the provisions of section 7482, Internal Revenue Code of 1954 (26 USCA sec. 7482).

The income tax returns involved were filed with the Collector (now District Director) of Internal Revenue, Baltimore, Maryland.

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(Joseph N. Romm)
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Takoma Park, Md.

Warren W. Grimes
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